

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte LONNELL E. SMITH

Appeal No. 2004-0072
Application No. 09/904,341

ON BRIEF

Before COHEN, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 3,
which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a device to prevent or discourage the theft of trailers which are towed by trucks or automobiles. More particularly, the invention relates to a leg or jack that is placed on the periphery of the trailer to retard the withdrawal of the trailer from where it has been parked (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Galasso et al. (Galasso)	5,242,178	Sept. 7, 1993
Peterson et al. (Peterson)	5,421,611	June 6, 1995
Knutson	5,599,002	Feb. 4, 1997

Claims 1 and 2 stand rejected under 35 U.S.C. § 103 as being unpatentable over Knutson in view of Galasso.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Knutson in view of Galasso and Peterson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final

rejection (Paper No. 6, mailed January 21, 2003) and the answer (Paper No. 10, mailed September 16, 2003) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 9, filed June 27, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 3 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention.

See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claim 1, the only independent claim on appeal, reads as follows:

An anti theft device for a trailer which is adapted to be towed by a vehicle comprising a pre-existing bracket attached to a side of the trailer [,] the bracket having a[n] opening whose length extends parallel to the longitudinal direction of the trailer and whose width is transverse thereto, a cylindrical pipe flattened at one end thereof such that the flattened end is adapted to be received in the bracket, the diameter of the cylindrical portion of the pipe exceeding the width of the opening in the bracket, the pipe when received in the bracket and disposed in a vertical relationship being adapted to lift the trailer slightly above the ground and the bottom of the bracket being in contact with the cylindrical portion of the pipe below the flattened end thereof.

Knutson's invention relates to a device which is attachable to the tail section of a snowmobile to lock the snowmobile in an elevated position of rest to prevent theft of the snowmobile. As shown in Figures 1-5, Knutson's anti-theft device 10 includes (1) a U-shaped frame 18 attached to the tail section 14 of the snowmobile 12; (2) a hollow sleeve 32 extending vertically from the U-shaped frame; and (3) a vertically extending lift bar 64 slidably mounted in the hollow sleeve 32. The lift bar 64 includes a groove 68 defined in one side which is alignable with opposed openings 80 in the hollow sleeve 32 to receive a lock 82 so as to lock the lift bar in position with the tail section of the snowmobile elevated.

Galasso's invention relates to a hitch for attaching a bicycle trailer to a bicycle. As shown in Figures 1-2, the hitch comprises a mounting bracket 10 adapted to be releasably attached to a chain stay of the bicycle frame (not shown) and a resiliently flexible coupling member 12 of an elastomeric material attached to the mounting bracket 10 and adapted to be attached to a boom tube 14 that is in turn attached to the bicycle trailer (not shown). The coupling member 12 provides universal articulation between the mounting bracket 10 and the boom tube 14. The coupling member 12 includes an elongated arm portion 30 of a substantially flattened uniform cross-section along its length. The mounting bracket 10 is bifurcated such as to define spaced-apart leg portions to receive part of the arm portion 30 of the coupling member in close-fitting relation and is affixed thereto by bolts and nuts. A cylindrical boss portion 32 at the rear end of the coupling member 12 is received telescopically within the boom tube 14 and affixed thereto by means of a bolt and nut. The boss portion 32 of the coupling member extends obliquely out and to the rear in alignment with the front part of the boom tube 14, the front end of which lies oblique to the longitudinal axis of the bicycle in order to provide clearance between the boom tube and the rear wheel of the bicycle for turning.

Peterson's invention relates to a self positioning device for supporting one end portion of a snowmobile in a elevated position. The self positioning elevating and

supporting device is carried at the rearward end portion of a snowmobile and upon being released from an inoperative position self positions itself to elevate and support in elevated position the rearward end portion of the snowmobile raising the underlying track arrangement thereof above the supporting ground surface.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Knutson and claim 1, it is our opinion that the differences are as follows: (1) a pre-existing bracket attached to a side of the trailer; (2) the bracket having an opening whose length extends parallel to the longitudinal direction of the trailer and whose width is transverse thereto; (3) a cylindrical pipe flattened at one end thereof such that the flattened end is adapted to be received in the bracket; (4) the diameter of the cylindrical portion of the pipe exceeding the width of the opening in the bracket; and (5) the pipe when received in the bracket and disposed in a vertical relationship being adapted to lift the trailer slightly above the ground and the bottom of the bracket being in contact with the cylindrical portion of the pipe below the flattened end thereof.

With regard to claim 1, the examiner determined (final rejection, pp. 2-3) that it would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the use of a flattened pipe of Galasso (i.e., the resiliently flexible coupling member 12) into the anti-theft device of Knutson in order to obtain the strength properties of the cylindrical pipe (i.e., the cylindrical boss portion 32 of Galasso's resiliently flexible coupling member 12) with a flattened end (i.e., the elongated arm portion 30 of Galasso's resiliently flexible coupling member 12).

The appellant argues that the applied prior art does not suggest the claimed subject matter. We agree. In our view, the disparate teachings of the applied prior art would not have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified Knutson's anti-theft device to arrive at the claimed invention. Clearly, Galasso's resiliently flexible coupling member 12 provides no teaching, suggestion, or motivation for an artisan to have modified Knutson's lift arm 64 to be a cylindrical pipe flattened at one end as set forth in claim 1. Moreover, even if it would have been obvious to have modified Knutson's anti-theft device as set forth in the rejections under appeal such would not have arrived at the claimed invention which requires the bracket to be attached to a side of a trailer. Knutson's anti-theft device is attached to the side of snowmobile, not a trailer, and the applied prior art contains no

suggestion to have applied Knutson's anti-theft device to a trailer instead of a snowmobile.

In our view, the examiner's rejections are plainly based on hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 1 to 3 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3 under
35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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Appeal No. 2004-0072
Application No. 09/904,341

Page 10

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